RUBBER manufacturers association

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Docket Management Section
US Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590

Re: Agency Information Collection Activities; Proposals, Submissions, and Approvals: Second request for public comment on proposed collection of information (69 Fed. Reg. 21881, April 22, 2004), Docket No. NHTSA 2001-10856 ("The Notice").

On behalf of its tire manufacturer members, the Rubber Manufacturers Association (RMA)[1] appreciates the opportunity to submit these comments in response to the above-referenced second request for public comment on proposed collection of information.

In response to previous RMA comments on the subject, NHTSA has requested comment under the Paperwork Reduction Act (PRA) with regard to the agency's proposed collection of information under regulations implementing § 7 of the Transportation Recall Effectiveness, Accountability, and Documentation (TREAD) Act, which amended 49 U.S.C. 30120(d). Therefore, analysis of and response to the questions posed in the Notice must be viewed in terms of the requirements of § 7 of the TREAD Act and related requirements in § 30120(d).

While RMA did request in its July 24, 2003 comments that NHTSA fulfill Paperwork Reduction Act (PRA) requirements, this request specifically applied to the proposed rule on the subject (66 Fed.Reg. 65165, December 18, 2001). The Notice does not in fact pertain to the information collection request (ICR) and associated burden contemplated by the proposed rule. Instead, the ICR components included in the Notice suggest that the Agency has modified the information collection requirements and reporting requirements included in the proposed rule. NHTSA, however, has not published a

[1]The Rubber Manufacturers Association ("RMA") is the leading national trade association representing the interests of tire and rubber manufacturers in the United States. RMA's membership includes all of the country's major tire manufacturers: Bridgestone Americas, Inc., Continental Tire N.A., Inc., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, and Yokohama Tire Corporation.

supplemental NPRM or otherwise solicited public comments on these revised information collection and reporting requirements.

Since the contents of the ICR contained in the Notice differ from the provisions of the proposed rule, the Notice presents administrative challenges. The Notice technically does not satisfy the PRA deficiencies in the proposed rule discussed in the July 24, 2004 RMA comments. However, the ICR contemplates changes to the proposed rule that RMA views positively. If the final rule, yet to be published, reflects the provisions outlined in the ICR, several of RMA's concerns expressed over the course of this rulemaking will have been alleviated. Unfortunately, at this juncture, RMA cannot make that determination, absent a final rule.

Given the administrative ambiguity described above, RMA provides below comments on the four questions raised in the Notice.

I. Is the Proposed Collection of Information Necessary for the Proper Performance of the Agency, Including Whether the Information Will Have Practical Utility?

First, it is useful to reference the provisions of § 7 of the TREAD Act. In addition to the existing requirements of 49 U.S.C. 30120(d), § 7 imposes specific requirements on manufacturers in the case of a remedy program involving the replacement of tires. These elements include:

- "a plan addressing"
  - "how to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle" and
  - "how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses;" and
- "information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification or remedy campaigns."

Sections A(1) through A(3) of the ICR explicitly address the requirements of the "plan" outlined above, while section V addresses the quarterly report requirement mentioned above. These sections are necessary to the proper performance of the agency in implementing the provisions of 49 U.S.C. 30120(d).

The notification(s) to be sent to stores, dealers, etc. discussed in sections A(4) and B are not specifically mandated by 49 U.S.C. 30120(d). However, to the extent that these notifications are interpreted as part and parcel of the "plan" required by statute, their receipt by NHTSA could lend to the proper performance of the agency. Yet, this nexus is not clear in the Notice.

The provisions contained in item IV of the ICR do not require information to be provided to the agency, so the necessity of the collection in terms of the agency's proper performance is unclear. Therefore, RMA concludes that the provisions in item IV would not meet the criteria outlined in the first question in the Notice.

II. The Accuracy of the Agency's Estimate of the Burden of the Proposed Collection of Information, Including the Validity of the Methodology and Assumptions

The accuracy of the Agency's estimate of the burden of the proposed collection of information depends largely on the magnitude of any particular recall. Developing a plan for properly disposing of recalled tires may be a relatively simple matter, if the recall is limited in nature. However, a sizable recall would require considerable staff work in order to develop, draft, review and approve an appropriate plan for the proper disposition of all recalled tires. Determining the required logistics, alone, will require careful consideration and development. While it is true that the Notice contemplates additional requirements to an existing ICR and would pose an incremental burden increase, the Agency's estimate of one hour of staff time for the development of a plan is woefully inadequate.

The Notice must recognize that the ICR would indeed pose new requirements that would entail staff time to appropriately address. RMA recommends that the Agency develop a burden estimate tied to the size of the recall. Further, the estimate seems to include only the staff time required by the physical process of writing a plan. On the contrary, the estimate should include the staff time required in developing, authoring and finalizing such a plan. Basing the burden estimate on such superficial analysis minimizes the importance of such a plan to the overall success and effectiveness of a recall and does little to reflect the serious nature of such an exercise.

The Agency also estimates "one hour of staff time" to prepare a notice to dealers regarding relevant legal requirements, directions on how to replace tires and alter recalled tires, and directions on how to ship recalled tires to the manufacturer or properly dispose of them. The Agency simply does not understand that these requirements include significant staff work before such a notice is written. Legal staff, technical experts and logistics personnel all will participate in the development of the notice to dealers, in order

to assure that instructions are clear, accurate and effective. Again, the magnitude of the recall must be taken into account when developing the burden estimate. One hour of staff time is simply not enough time to fully develop, draft, review and approve such a Notice. As described above, the burden estimate should include the staff time required to develop a thorough notice, which addresses all the critical points necessary to assure proper handling of recalled tires.

The Notice asks for comment on the "validity of the methodology and assumptions." Unfortunately, we are unable to ascertain the methodology used in arriving at the "one hour of staff work" estimate for each if the two components discussed above, or a total of 20 hours annually, based on 10 recalls a year. The Notice does not contain a discussion of methodology. Likewise, RMA was unable to secure any other methodology discussion through a review of the docket. Based on the assessment of the burden estimates discussed above, RMA has no choice but to conclude that the methodology and assumptions used in developing the burden estimates are flawed. However, without review of the methodology and assumptions, a thorough critique is impossible. We therefore urge the Agency to make the methodology and assumptions used to develop this burden estimate available to the public.

NHTSA does discuss assumptions made with respect to burden estimates regarding "deviations from the disposal plan." We would tend to agree with the assumption that such deviations are unlikely. However, the assumption that this requirement would not require any additional staff time is unrealistic. Even if a manufacturer does not in fact report any such deviations, some staff time would be required during the development of the required quarterly report to conclude that no deviations have occurred. NHTSA should include some staff time in the burden estimate to allow for such review and analysis of records during the preparation of each quarterly report pursuant to a recall. As discussed above, the extensiveness of this review will depend on the magnitude of the recall.

III. How to Enhance the Quality, Utility and Clarity of the Information to be Collected

Since no other opportunity has been afforded to provide comments on the substantive requirements of the ICR contained in the Notice, RMA appreciates the ability to provide comments at this time. As discussed above, the ICR outlined in the Notice is a vast improvement from the provisions of the proposed rule (66 Fed.Reg. 65165, December 18, 2001). RMA is hopeful that the language in the ICR reflects the Agency's final rule.

The ICR contains concise requirements, which allow the manufacturer flexibility to structure its recall program in a matter that best suits the situation, while providing

NHTSA information sufficient to satisfy the provisions of § 7 of the TREAD Act. For example, the ICR would allow a tire manufacturer conducting a recall to have all recalled tires in central location(s) or allow the manufacturer to collect and dispose of the tires. Alternatively, the manufacturer may allow the tire dealer removing the recalled tires to dispose of the tires. This flexibility will allow a particular recall program to be tailored to fit the circumstances of the recall.

Additionally, the ICR would allow the tire manufacturer discretion to determine when a recalled tire should be disabled, rather than requiring a recalled tire to be disabled by the end of the day on which it is removed from a vehicle. This flexibility allows the tire manufacturer to conduct testing of some recalled tires. This will allow the tire manufacturer to research the root cause of the alleged tire defect prompting the recall and assist in preventing similar issues in the future. RMA appreciates NHTSA's recognition of this important need. This type of tire testing will have the potential to enhance future tire safety, and therefore furthers the goals of the TREAD Act.

The ICR also recognizes that in some cases monthly deviation reporting would not be practicable. Instead, the ICR would allow deviation reporting monthly *or* within 30 days of the deviation. This will promote timely reporting of deviations without disadvantaging a manufacturer whose reportable deviation occurred near the end of a monthly reporting period. The spirit of monthly reporting is preserved, while allowing for additional flexibility in implementation.

The ICR allows flexibility as well by not imposing recordkeeping requirements. Practically speaking, tire manufacturers will keep records during the course of a recall. Yet, the nature and extensiveness of the records required will depend on several factors, including the number of tires affected by the recall, the number and type of entities participating in implementation of the recall, and the structure and complexity of the recall plan. Tire manufacturers are therefore free to design a recordkeeping regime that closely fits the needs of the recall, thus maximizing the effectiveness of the recall.

The ICR does not address the scope of its applicability. In comments dated May 9, 2002 and August 26, 2002, RMA advocates that the requirements contemplated in the ICR should be limited to those recalls involving more than 10,000 tires. RMA continues to support that position. Limiting these requirements to large recalls would be consistent with the spirit of the TREAD Act, addressing those recalls where tracing individual affected tires is impracticable. On the contrary, in the case of smaller recalls of less than 10,000 tires, typically a manufacturer can trace shipments of the affected tires to specific vehicle manufacturers, tire dealers, or other retailers. In such situations, the plan and notifications required by the regulatory provisions inherent in the ICR, would be an unnecessary burden to the manufacturer and would not increase tire or vehicle safety in any meaningful way. Including such a recall size threshold in the regulation would in

fact enhance the quality, clarity and utility of the data collected, since fewer plans would be filed, allowing for more thorough review of the plans received.

IV. How to Minimize the Burden of the Collection of Information

RMA encourages the Agency to utilize any and all means to minimize the burden of the collection of the information. RMA specifically supports electronic submission of reports and other information submissions to NHTSA. In addition, RMA supports third party notification through use of websites, e-mails, fax distribution and any other available electronic or technological medium capable of reliable and efficient distribution of information. Such methods would allow for prompt distribution of critical instructions and other materials to tire dealers and other tire retailers performing tire replacements pursuant to a tire recall. RMA recommend that NHTSA allow maximum flexibility in this area, promoting compliance with § 7 of the TREAD Act while minimizing the burden on a tire manufacturer conducting a recall.

V. Conclusion

RMA once again appreciates the opportunity to provide comments pursuant to this rulemaking. RMA encourages NHTSA to implement the recommendations included in these comments. If any of the enclosed comments require further explanation or if questions arise, please contact me at 202-682-4839 or **tnorberg@rma.org**. RMA looks forward to assisting NHTSA as it works to promulgate the rule regarding the disposition of recalled tires. We would welcome dialogue with NHTSA staff on any issues discussed in these comments.

Sincerely,

Tracey J. Norberg
Vice President
Environment & Resource Recovery